FILE COPY

No. [illegible]

In the [illegible]

October Term, 1941

MITCHELL, OLLIE [illegible] ANDERSON, JOHN EDWARD STRONG, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LESTER ELLIS, ROBERT LEE BALLEW, JOHN DAVID GUNTER, ROBERT LEE RHODES, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions presented	2
Statement	2
Argument	27
Conclusion	42

CITATIONS

Cases:

Alford v. *United States*, 282 U. S. 687	38
Bram v. *United States*, 168 U. S. 532	33
Brown v. *Mississippi*, 297 U. S. 278	31
Chambers v. *Florida*, 309 U. S. 227	31, 33, 34
Fields v. *United States*, 221 Fed. 242, certiorari denied, 238 U. S. 640	39
Forte v. *United States*, 94 F. (2d) 236	37
Galatas v. *United States*, 80 F. (2d) 15, certiorari denied, 297 U. S. 711	42
Glasser v. *United States*, Nos. 30–32, this Term, decided January 19, 1942	38, 40, 41
Langer v. *United States*, 76 F. (2d) 817	37
Lisenba v. *California*, Nos. 4–5, this Term, decided December 8, 1941	29, 31, 32, 33, 34, 35
Murray v. *United States*, 288 Fed. 1008	37
Meyers v. *United States*, 94 F. (2d) 433, certiorari denied, 304 U. S. 583	42
Oldstein v. *United States*, 99 F. (2d) 305	37
Ryan v. *United States*, 99 F. (2d) 864, certiorari denied, 306 U. S. 635	37
United States v. *Manton*, 107 F. (2d) 834, certiorari denied, 309 U. S. 664	38
United States v. *Marcus*, 53 Fed. 784, error dismissed *Marcus* v. *United States*, 159 U. S. 259	37
Vinkemulder v. *United States*, 64 F. (2d) 535, certiorari denied, 290 U. S. 666	36, 37
Wan v. *United States*, 266 U. S. 4	31, 33
Warszower v. *United States*, 312 U. S. 342	37
White v. *Texas*, 310 U. S. 530	31

Statutes:

Criminal Code:	
Section 35 (c)	2
Section 37	2
Section 82	2
Section 88	3

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 868–884) is reported in 124 F. (2d) 58.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 4, 1941 (R. 867). The petition for a writ of certiorari was filed January 9, 1941.[1] The jurisdiction of this Court is in-

[1] The time for filing a brief in opposition was extended to and including March 26, 1942.

voked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the confessions of petitioners Woodward, Simonds, Hubbard, Queen, Ballew, and Rhodes were admissible in evidence against them.

2. Whether the Government was required to prove the participation in the conspiracy of petitioners Queen, Ballew, and Rhodes independently of their confessions.

3. Whether the trial court improperly limited the cross-examination of government witnesses.

4. Whether the evidence is sufficient to support the convictions of petitioners Anderson and Ellis.

STATEMENT

Petitioners were convicted [2] (R. 862–863) in the District Court of the United States for the Eastern District of Tennessee upon an indictment in one count (R. 2–22) charging that they conspired to damage property of the Tennessee Valley Authority, a corporation in which the United States

[2] At the end of the Government's evidence, the court directed verdicts of not guilty as to seven of the defendants: Van D. Jones, James Gordon Parr (R. 579), Tate C. Green, Leslie Bryant Green (R. 580), Clyde L. Huffman, William Clint Huffman, and Benjamin Cross (R. 581). Five of the defendants, John E. McGhee, Joel Martin Simonds, Thomas Wayne Henry, Meggs Collins, and William Rans Smith, were acquitted by the jury (R. 862, 863).

is a stockholder, in violation of Sections 35 (C) and 37 of the Criminal Code, as amended, 18 U. S. C., Secs. 82, 88.[3] Petitioner Anderson was sentenced to imprisonment for two years and to pay a fine of $5,000 (R. 31); petitioner Ellis to imprisonment for fifteen months and costs (R. 38); and petitioners Simonds (R. 32–33), Woodward (R. 33–34), Hubbard (R. 34–35), Queen (R. 35–36), Rhodes (R. 36–37), and Ballew (R. 39–40) to imprisonment for two years and to pay fines of $1,000. The judgments of conviction were affirmed by the Circuit Court of Appeals (R. 867).

A. THE EVIDENCE EXCLUSIVE OF THE CONFESSIONS

On July 14, 1939, the International Union of Mine, Mill and Smelter Workers (R. 615), affiliated with the Congress of Industrial Organiza-

---

[3] 18 U. S. C., Sec. 82:

"Whoever shall take and carry away or take for his use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, * * * shall be punished as follows: If the value of such property exceeds the sum of $50, by a fine of not more than $10,000, or imprisonment for not more than ten years, or both; * * *."

18 U. S. C., Sec. 88:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

tions (R. 698, 740) called a strike at the Tennessee Copper Company mines at Copperhill, Tennessee (R. 137, 689). Petitioner Anderson was the national representative and organizer for the Union (R. 614), and the other petitioners were members who went out on strike (R. 606, 652, 670, 681, 698, 734, 745). The plant was closed, but reopened six weeks later while the strike was still in progress (R. 550). Meanwhile, the sheriff of Polk County had appointed a large number of special deputies (R. 551, 553) and established headquarters at the company-owned Y. M. C. A. building at Copperhill (R. 540–541, 551–552, 733).

The strike continued through April 1940. At that time two transmission lines belonging to the Tennessee Valley Authority, a corporation in which the United States was a stockholder, led into that part of Polk County, Tennessee, and Fannin County, Georgia, known as the Copper Basin; the lines were supported on wooden poles and steel towers each of which had a value of more than Fifty Dollars (R. 125–126, 128–129). One line and its feeders was known as the Parksville, or Ocoee line; the other as the Blue Ridge line. From them the Company obtained power for its operations.

Shortly after midnight on April 1, 1940, both lines were dynamited, interrupting the service (R. 125–127).

On April 13, 1940, one Patterson came to the home of Freed Long in Isabella, Tennessee, and

told him someone wanted to see him at Willie McGhee's store. Long, who was the principal witness for the Government in proving the conspiracy, had a withdrawal card of the union and had helped on the picket line (R. 132, 137, 595). According to his testimony, Long walked to the store, where he was told that he was wanted at petitioner Anderson's office[1] (R. 132). Petitioner Ellis, who was at the store with Anderson's car, then drove Long to Anderson's office in Ducktown (R. 132, 137). There Long met Anderson, John McGhee, Clint and Clyde Huffman, Rans Smith, and Felton Woodward. Woodward, who is a petitioner here, and the Huffmans, who are not, left as Long arrived, after talking with Anderson in a tone inaudible to Long; but the others remained. Anderson then told Long that "they were going to try to shut the plant down and wanted to kind of jamb up the mine a little bit and wanted me to help them do that; the plans were to go down in the mine and blow up the magazine, they were going to shut the power off too, somebody was" (R. 133, 138). Anderson "said they wouldn't need fuse," that "it would be done by wires" (R. 133, 138–139). Long's part was to go down with them into the mines (R. 133–134). "Nothing was said about blowing the towers there that night or that afternoon, they

[1] Long testified that this was not the regular union office (R. 137).

just said the power would be off" (R. 133). At 8:45 p. m. the next night, April 14, 1940, a steel tower on the Parksville, or Ocoee, line was dynamited, interrupting service on that line (R. 125, 127–128). About thirty minutes later a steel tower on the Blue Ridge line was dynamited, but the power line did not go down and service on it was not interrupted (R. 128). The record does not show that any effort was made to blow up the mine.

Long also testified that on April 18, 1940, he attended another meeting in Isabella, Tennessee. Petitioners Anderson, Woodward, Hubbard, and Simonds were among those present (R. 139–140). "They talked about blowing up the mines and shutting off the power again, there was a little discussion about the power line, they somehow couldn't get going on it. Ed Simonds said on the 14th two of the men [Mutt and Tate Green] ran off and wouldn't help him." Anderson wanted the towers and poles blown up again (R. 134). Petitioner Simonds was to "look after" the Blue Ridge line, and petitioner Woodward the Parksville, or Ocoee, line (R. 134). Petitioner Simonds said "he believed he could get these men to go with him again to blow up the tower on the Blue Ridge end," and Woodward "finally agreed he could swing the lower [Parksville] end" saying, "I am sure we can go through with the lower end of it." The time was set for April 24.

As far as the mine was concerned, since Long was not experienced in mining, it was decided that he would stand guard outside the mine "to keep them from being surprised going in or out." Petitioner Hubbard gave Long a rifle which he "imagined" he was "supposed to use * * * to protect their entrance and exit from the mine" (R. 134, 135, 136).

After this meeting Long informed B. E. Biggs, the sheriff of Polk County, that the Parksville and Blue Ridge lines, as well as the copper mine at Isabella, would all be blown up at 1:20 a. m. on April 24th (R. 467, 557, 563, 564). The sheriff testified that he stationed men at the mine (R. 563–564), but that he was unable to patrol the power lines which extended for several miles (R. 467, 563). On April 24, between 1 a. m. and 2 a. m. towers on both the Blue Ridge line and the Parksville line were dynamited; on both lines service was interrupted (R. 125, 128).

In addition to Long's testimony the chief evidence for the Government was the confessions presently discussed, but there was other corroborating circumstantial evidence. Phelps, an employee of the Hercules Powder Company in Bessemer, Alabama, testified that a "John M. Cash" had bought dynamite and fuse from him on April 9, 1940. Casings found in the vicinity of power line towers after the first explosion showed that the same kind of dynamite had been

used to destroy them (R. 148–149, 162–164, 510–511). Phelps identified petitioner Woodward as John M. Cash (R. 511–512). There was also evidence that petitioner Ellis had been driving Anderson's car on back roads on the night of March 31st, when the first dynamiting occurred (R. 152–153). He was stopped about fifteen minutes before the first explosion and in the car were a brace and two bits (R. 153, 154, 156, 157, 160). Later it was found that the poles dynamited that night were wooden and had been bored with a brace and bit to make holes for the dynamite (R. 153).

The petitioners' defenses were denials of the Government's evidence and suggestions that the Company caused the lines to be blown up and the petitioners to be accused in order to break the strike. They explained that their meetings were to conduct union affairs, arrange strike benefits, and carry on ordinary union activities in respect to the strike. They offered numerous character witnesses. Petitioner Woodward offered witnesses to show that he was in Atlanta, Georgia, when John M. Cash was alleged to have bought the dynamite (R. 648–651). Petitioner Ellis explained that he was driving around on the night of March 31st to relieve his baby's colic (R. 606–607). Petitioner Ballew offered witnesses who contradicted statements in his confession by testifying that he was farming on certain days on which the confession stated that he was arranging

the explosion (R. 766–767). Otherwise, the petitioners offered no alibis.

B. THE CONFESSIONS AND THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE

On April 16, 1940, Special Agents Mann and Roach of the Federal Bureau of Investigation arrived in Copperhill to investigate the destruction of T. V. A. property (R. 165, 168, 332). Special Agent Plaxico arrived on the night of April 24, and Special Agents Lunsford, Whitten, Morgan, Hevron, and McCabe arrived shortly thereafter (R. 168–169). Sheriff Biggs had compiled a list of about 80 or 90 men in the Copper Basin who were experienced with powder and dynamite and gave that information to the agents (R. 194, 556, 562–563).

On April 24th Sheriff Biggs caused petitioners Hubbard, Woodward, and Simonds to be arrested "on State charges" (R. 200, 223, 247, 540); on April 28th his deputies arrested petitioners Rhodes and Queen (R. 733, 682); on April 30th Ballew was taken in custody (R. 746). On various days the sheriff also took in custody the remaining twenty-one original defendants. He made the arrests and held the petitioners on his own initiative on State charges.[5] The record does not support the petitioners' statement[6] or the implication in the brief filed on behalf of National Federation for Constitutional Liberties, *amicus curiae*,

[5] Pet. 5, 16–17.

[6] Br. 3, 5.

that he acted at the request of the Special Agents of the F. B. I. in arresting the petitioners (R. 170, 192, 303–304, 333–334, 542). Neither does the record show that "80 or 90 men were taken into custody";[7] the highest number mentioned in the record is that at one time or another the sheriff had arrested all twenty-one defendants (R. 540, 559); at least in the beginning he based his decision to make the arrests upon the information given to him by Long (R. 192).

The Special Agents questioned the men who were in the custody of the sheriff, using for the purpose the Y. M. C. A. in Copperhill (R. 170, 171, 191, 307). Petitioners Woodward, Hubbard, Simonds, Queen, Rhodes, and Ballew gave written confessions[8] which set forth in detail how the dynamitings were planned, how the dynamite and other equipment were obtained, moved, and concealed, and the technique used in blasting the poles and steel towers.

At the trial petitioners objected to the introduction of the confessions in evidence on the ground that they were obtained by duress and inducements (R. 167, 775–776). The court conducted a preliminary examination on this question in the ab-

---

[7] Pet. 16; cf. Br. for *Amicus Curiae* 4, 5.

[8] Woodward (R. 445–462); Hubbard (R. 501–505); Simonds (R. 412–415); Queen (R. 518–521); Rhodes (R. 524–526); Ballew (R. 527–529).

sence of the jury (R. 168–401).* The evidence introduced during the preliminary examination was sharply conflicting; the facts stated in the petition at pages 14 through 20 and in the brief of *amicus curiae* at pages 4 through 6 are not "drawn from" and do not accurately "include" the testimony of Government witnesses. For this reason we set forth as to each petitioner separately the evidence introduced at the preliminary hearing.

Simonds. Petitioner Simonds, one of the men on strike, was arrested on Wednesday, April 24, 1940. He was taken by two deputy sheriffs to the Y. M. C. A. in Copperhill where Agent Mann questioned him for an hour and three-quarters (R. 223–225). He testified that that night he was placed in jail with Felton Woodward "and maybe someone else" in a seven by nine foot cell with nothing to eat for supper (R. 225). Around seven o'clock he was questioned again for about two hours in the Y. M. C. A. and returned to the city jail (R. 226). In the morning he was given a cold bologna sandwich to eat and some coffee; and the same thing for lunch and supper (R. 226–227). During the day he was questioned—he couldn't remember how long—and again that night for one or two hours (R. 227).

* In the instances of the confessions of Rhodes, Queen, and Ballew, the evidence was heard by the court in the presence of the jury by agreement to expedite the trial (R. 516–517).

Simonds was also uncertain as to the hour at which this questioning occurred; at first he said that it was "close to midnight" but later he volunteered that it was "before midnight" but "after my bedtime"; "it must have been around 9 or 10 o'clock" (R. 227, 236, 237). The next morning (which would have been Friday, April 26th) Simonds ate a bologna sandwich and some coffee which had a sickening taste, upset his stomach and made him nervous (R. 228). He testified that he was questioned again that day and made a statement "four or five days after I was picked up" (R. 229). No questions were asked Simonds as to what took place or how he was treated on the other days during which he was in custody before his confession was signed.

Simonds also testified that he asked for a lawyer on the day after his arrest, when Agents Roach, Mann, and Plaxico were present, but that they refused, telling him he had become "damned smart" in one night in jail; neither was he allowed to see "anybody from the outside" (R. 230, 239). At various times when the door to the room in which he was being questioned was opened, he saw armed deputies laughing as they passed but he did not know whether they were laughing at him (R. 230). The agents, Plaxico for the most part, Simonds said, promised to influence the judge to give him a light sentence or a "parole" if he made a statement, and threatened that he would be sentenced to fifteen years if he did not

(R. 230–231, 237–238); and Plaxico also said that he might be able to have bail set at a $1,000 bond (R. 231, 239). Finally, Simonds testified that the agents often said that they knew the truth and called him a damned liar and that on one occasion Agent Mann stepped up close, "slung" back his hand and called him "a God damn lying son-of-a-bitch" (R. 231–232). Simonds claimed to have lost almost forty pounds during the questioning (R. 232).

The Government introduced evidence to contradict Simonds' claims. Roach, Plaxico, and Mann testified that they first questioned him for two hours on April 25th, Thursday, and for two hours more beginning at seven o'clock that night, for an hour on Friday morning and then again on Sunday when he made his confession after an hour of questioning (R. 173–174, 176, 274, 279, 285, 289, 311–312, 326, 336). On Saturday Agent Morgan asked him questions for a short time (R. 387). Each of these agents swore that Simonds did not request counsel (R. 175, 290, 325, 327, 359, 368, 372, 388). Each denied that he or any other agent in his presence threatened a heavy sentence or promised a light one (R. 176, 290, 291, 296, 327, 337, 388; cf. R. 372). No other agent questioned him for more than half an hour (R. 278, 345, 348, 361, 387; cf. R. 372). Likewise Roach, Plaxico and Mann denied in general terms that they had promised anything to obtain a statement (R. 274, 291, 296, 327, 337, 347); and specifically denied that

they had said that they would arrange a low bond (R. 176, 277, 317, 337) or probation or parole (R. 274, 277, 287, 295, 296, 317, 337). Agent Morgan gave similar evidence (R. 388). A deputy sheriff, Campbell, testified that he had told some of the men in jail that Plaxico would recommend a parole for "those boys that come clean," but he could not remember when the statement was made (R. 272–273) and Simonds did not claim to have heard it. Each agent also testified that neither he nor anyone in his presence had cursed at Simonds or called him a liar; and it was denied that Mann had threatened to strike him (R. 186, 276–277, 287, 292, 372). The agents explained that their procedure was to break down petitioners' stories by checking their alibis with relatives and friends and confronting them with the results of such investigation (R. 134, 184–185, 193, 292, 320–321, 328, 340–343). In Simonds' case, Plaxico explained what took place as follows (R. 291; cf. R. 194–195):

> Well, on the first occasion we had information involving Ed Simonds, we went in there and talked to him very plainly about what we had, and pointed out to him the information we had, and he denied everything so we went on about our business; and the second occasion, that was Sunday afternoon we went over the entire case with him, and pointed out the discrepancies in his story and the information we had developed on investigation, which knocked down his alibi.

and out of a clear sky he said "well, I want to tell you I am guilty."

Simonds told the agents, they said, that they were "the finest bunch of men he had ever come in contact with" (R. 292). There was also general evidence, applicable to Simonds, that none of the men in custody were mistreated. Roach testified that the petitioners commented upon the fact that they had been treated well and had had good food (R. 188–189, 196) and Plaxico recalled that Simonds himself had commented on the good food served to him (R. 292). And although they did not take the stand at the preliminary examination, it is appropriate to point out that the sheriff and two deputies testified before the jury that the men in custody ate the same food as the deputies, that the food was carried to the jail when necessary,[10] that the men in custody usually slept at the Y. M. C. A. "in the same kind of beds" that were furnished the deputies, and that no one was forced to spend more than two nights in jail (R. 554,

[10] Hensley, the cook at the Y. M. C. A., testified (R. 570) that "The deputy sheriffs ate the same meals as the prisoners. They had the same things as the guards ate. We would run a regular course of meals through the week and chicken on Sunday, roast beef, stew, steak and onions, or something like that. We had coffee about 19 cents a pound, I made it in an urn and drank it myself and these men drank the same sort of coffee I did. I never put anything in the coffee. I have carried food down to the city jail from the Y. M. C. A. myself."

566–569, 670). Mrs. Simonds knew that Simonds was being questioned (R. 178–179, 287); and the Union apparently was prepared to give legal aid.[11] He could talk and consult with his associates for they were being held in custody together.

Woodward. Petitioner Woodward testified at the preliminary examination as follows: Shortly after noon on Wednesday, April 24, 1941, he was arrested and taken first to the Y. M. C. A. and then to the city jail (R. 247–248). He was given no supper that night and the next morning, Thursday, only a bologna sandwich and coffee for breakfast, bologna sandwiches for lunch and no supper (R. 248–249). He was questioned for the first time Thursday night by Roach and another man (R. 249, 252). The questioning lasted three hours, after which Woodward was returned to the city jail where four men were crowded into

---

[11] Counsel had been retained by the Union "two or three weeks before this matter arose." This counsel testified that he had to make "considerable effort to contact the men in custody who I considered to be my clients, before I was permitted to see them." The record does not show that counsel made any effort to obtain their release from custody prior to the day upon which they were arraigned (R. 768–770). Campbell, Chief Deputy Sheriff of Polk County, R. 268), testified that on one occasion Mr. Hunt and Mr. Townsend (petitioners' counsel) came to Copperhill to see petitioners and Campbell told them they would have to get permission from Sheriff Biggs, who was out at that time, before they could see the men (R. 271). The record does not show whether counsel waited or made any attempt to see Biggs.

one cell (R. 250). Friday morning he had more bologna and coffee, which gave him a headache and made him sick and restless (R. 250–251). He was questioned for three hours that afternoon and for three or four hours that night and returned to the city jail about eleven o'clock (R. 251). Saturday morning he had another sandwich to eat and was left in jail all that day and all day Sunday without anything to eat (R. 252). He was questioned Saturday—he did not say how long—and signed a statement at eleven or twelve o'clock Monday night (R. 253).[12] He claimed to have lost fifteen pounds during this period (R. 240, 265).

Like Simonds, Woodward claimed that various agents promised "to take care of" him if he would confess, and to arrange low bail and a parole (R. 261, 262–263). He also said that on one occasion Agent Morgan forbade him to smoke (R. 257), and cursed him as a liar (R. 254), and threatened that he would be taken to Atlanta and made to talk (R. 260). Woodward did not, however, assert that he asked for or was denied counsel. His father-in-law testified that he was refused permission to see him (R. 642–643).[13]

---

[12] In testifying before the jury Woodward added that he was questioned three hours Saturday, four or five hours Sunday, and that Monday night he signed a statement after being questioned "almost all night" (R. 693–695).

[13] Sid Howell, petitioner Woodward's father-in-law, testified that on Thursday, April 25, he went to the Y. M. C. A. to see Woodward, and deputy sheriff Rose said "there wasn't anyone allowed to see him at all"; that he went

The federal agents gave evidence contradicting Woodward's charges. The general testimony to which we have referred in stating the circumstances of Simonds' confession applies equally to Woodward. See p. 15, *supra*. The agents also specifically denied that Woodward was questioned as often or for as long as he asserted. Morgan testified that he questioned Woodward on two unspecified occasions for about fifteen minutes (R. 389). Roach testified that he had interrogated Woodward for two hours on Thursday, April 25th (R. 187, 278–279); Mann and apparently Hevron were also present (R. 328, 348).[14] Roach questioned him again between seven and nine o'clock that evening (R. 436). Woodward was questioned next on Sunday afternoon (R. 187, 294, 328, 373). He was brought into the room at the request of Simonds and Hubbard after they had confessed and, upon being told of their confessions, admitted his guilt (R. 195, 275, 293, 294, 297,

---

again on Friday, April 26, and another deputy, Creed Brock, told him "that no one was allowed to see him at all, that they was questioning him" (R. 642); and that on Saturday, inside the City Hall in Copperhill, he was permitted to talk to the Woodward brothers through a peephole (R. 643). Sheriff Biggs, however, testified, "I didn't refuse to let Sid Howell see Felton Woodward, but he possibly was not allowed to see him while he was being talked to by me or some of my officers" (R. 555).

[14] Hevron testified that he and Mann did the questioning on Thursday (R. 348). Roach and Mann testified that they questioned Woodward that day but neither was asked who was with him (R. 187, 328). Woodward testified that it was Mann and one other (R. 249, 252).

323, 328). At that time Mann, Plaxico, and Roach were present (R. 180, 293, 328). On Monday, Woodward's statement was reduced to writing (R. 187, 294, 329, 341, 353–354). It consisted of five typewritten pages, single spaced (R. 445–462), and much of the time was spent in typing it, because Agent Mann could not type rapidly (R. 329, 343). They worked at it from about 11 a. m. until 2 p. m., and then recessed for lunch, and came back at about 3:30 p. m. and worked until 7 or 7:30 p. m. (R. 341, 354, 470). Woodward had trouble recalling details as to the times of the dynamitings and the meetings he attended. "He would state facts and then want to change them and rather than change it or erase it I [Mann] indulged him a long period of time and waited. Sometimes he would sit five minutes meditating over what we asked him" (R. 343). The statement was taken by Mann, McCabe, and Hevron (R. 187, 328–329, 348, 354). Agents Whitten and Lunsford never questioned Woodward (R. 361, 373); Morgan questioned him twice but only for about fifteen minutes (R. 389).

The agents denied specifically Woodward's assertions that he had been promised that he would "be taken care of" (R. 296, 330), that a low bond would be arranged (R. 337)[15] and that a

[15] The United States Commissioner, before whom petitioners were arraigned on May 1, 1940, on federal charges testified that Agent Mann requested that he fix the bond on some defendants at $1,000 and on the others at $3,000 (R.

parole would be secured for him (R. 280, 295, 296, 330).[18] It was also denied that Woodward had been threatened (R. 390) or told that the agents were in the Copper Basin to break the strike (R. 280, 295, 330, 349, 389–390) or called a damned liar (R. 278, 280, 295, 349, 389). The agents also testified that Woodward was told that he need not make a statement but that he chose to do so voluntarily (R. 193, 445). When the statement had been typed out Mann read it over to him slowly and Woodward said it was the truth (R. 357).

Hubbard. Petitioner Hubbard was arrested without a warrant on the evening of April 24th and taken to the Y. M. C. A. and then to the city jail in Copperhill (R. 200–201). He testified that he was questioned for the first time on Thursday morning about eleven o'clock for three or four hours and spent that night at the Y. M. C. A. without further questioning (R. 201–202); that on Friday morning he was questioned for two hours and on Friday afternoon for "two or three or four hours" (R. 202–203) and that he and three other men, including a drunk, were placed in a small cell that night in the city jail (R. 203). On Saturday, Hubbard said, he was questioned from nine o'clock until five-thirty by relays of two agents

---

217–218, 221) and had a note that some days later Mann requested that Woodward's bail be reduced. Mann denied positively that he had made any such recommendations (R. 338).

[18] Compare Campbell's testimony, p. 14, *supra*.

who interrogated him an hour at a time (R. 204); his glasses were taken off and he was "pushed up straight" in a straight-backed chair (R. 204–205); at noon he asked for a doctor but was given aspirin and told that he did not need medical care; the doctor finally came after dark (R. 205). All that day, he said, he was refused water and cigarettes (R. 207); he was given nothing more to eat—and asked for nothing—although his breakfast had been bologna and the coffee had tasted peculiar and given him a headache (R. 206–207). Hubbard also testified that the agents called him a damn liar and told him that they knew the truth (R. 206), that all day Saturday he was promised a nice meal and a drink of water if he would confess (R. 207); that a $1,000 bond could be arranged; that deputies laughed at him and sneered when they passed the open door (R. 208, 209); and that he asked for a lawyer and was refused (R. 208). Hubbard claimed to have lost twenty pounds during these six days (R. 209).

Each of Hubbard's allegations was denied. He was questioned by Roach, Hevron, Plaxico, and Mann for about two hours on Thursday afternoon, April 25th (R. 181, 297, 323, 345, 352) and for two hours that evening by Plaxico (R. 283, 296, 297). Whitten and Lunsford interrogated him the following evening from seven-thirty to nine-thirty (R. 358–359, 363, 365, 367, 375, 376). Morgan and perhaps McCabe asked questions for fifteen or twenty minutes or longer (R. 384, 391). Plaxico and Roach asked Hubbard questions on Sat-

urday, the day on which, according to Hubbard's testimony, the questioning was most prolonged, for two periods of less than half an hour (R. 182, 313, 314, 378, 392). On Saturday, McCabe also questioned him for about two hours (R. 497). On Sunday, Hubbard confessed immediately after Simonds; he had been in the room while the agents were talking to Simonds (R. 194–195, 275, 293, 294, 297). Later that evening after Woodward also had confessed, the three were placed in jail together at their own request "to get the details of their stories straight" (R. 188, 276, 326–327). Hubbard's confession was written out as he repeated it on April 30th in about two hours (R. 365, 379).

During these periods of questioning, the agents stated, Hubbard wore his glasses (R. 183, 299, 324, 346, 359, 368; cf. R. 387); he was allowed to smoke and smoked almost continuously (R. 299, 324, 325, 345–346, 359–360, 369–370, 385); he was not called a liar (R. 299, 360, 364; but cf. R. 356–357, 399) or cursed (R. 299, 324, 325, 346, 360) or pushed back in his chair (R. 346, 360, 369, 386); no threats or promises, and no offer of a light sentence or parole, were made to him (R. 281, 324, 347, 359, 361, 371, 377, 386); he was not refused water (R. 325, 360, 368, 385) or offered a good meal if he would make a statement (R. 369; see also R. 809). The agents testified that when Hubbard complained of a headache they wanted to call a doctor but Hubbard said that he would be all right and they gave him an aspirin (R. 393.

cf. R. 370–371). The doctor, who was summoned later, found that Hubbard had an ordinary cold and gave him some capsules "what we usually give for common colds" and a laxative (R. 199; cf. 183). Finally, there was evidence that on the only occasion on which Hubbard asked for an attorney he instantly changed his mind saying that he did not need one because he had done no wrong (R. 346–347, 352; cf. R. 325, 359, 368, 385).

Rhodes. Petitioner Rhodes testified as follows: He was arrested Sunday night around 8 o'clock and spent the night in jail in the cell with Woodward, Simonds, Queen, and Hubbard (R. 733–734). At 10 o'clock on Monday he was questioned for an hour and half or two hours by Agents Whitten and Lunsford who repeatedly called him a liar (R. 734, 736). He signed a statement typed by Lunsford at that time "because he told me to sign it" and because Lunsford said "they would take care of me" (R. 736).

Agents Lunsford and Whitten both testified. Each denied that he had called Rhodes a liar (R. 801, 809), that they had promised "to take care of him" (R. 801, 809) or that they had promised or threatened anything to obtain his statement. (R. 524, 810).[11]

[11] Rhodes also said he "couldn't see a lawyer or anybody" but apparently was speaking of the day on which he pleaded guilty (R. 737). The agents were not asked specifically whether Rhodes asked for an attorney before the confession was signed.

Queen. Petitioner Queen testified that on Sunday afternoon, April 28, when he was arrested, his baby was seriously sick (R. 682); that he and four of the others were put in one cell that night and that on Monday he signed a paper, not knowing what was in it, "because the FBI men, Mr. Mann and Mr. McCabe was there and after they got through talking with me, they got up and turned their backs and McCabe wheeled around and said sign this right here, I guess you are in hurry to get back to your wife and baby" (R. 683, 684).

The agents denied Queen's assertions (R. 794, 820–821). McCabe took the statement in his own handwriting (R. 522). No promises or threats of any sort were made to obtain Queen's confession (R. 518, 523, 821); on the contrary, the agents testified, he said "he was anxious to give a statement, that he thought he had been misled" (R. 523).

Ballew. Petitioner Ballew, according to his evidence, was arrested a few yards over the state line in North Carolina, forcibly brought into Tennessee where he was handcuffed, and taken to the Y. M. C. A. at Copperhill (R. 746–748). There he was questioned from 4 o'clock in the afternoon until about 6 o'clock by Agents Lunsford and Whitten and then was taken to jail (R. 748, 752, 755). Next morning, he went to the court house and signed, without reading, a paper which he thought was a release because Whitten told him to sign it and he could go home (R. 752–753, 761). He admitted, however, "nobody cussed me out and

I was not abused or threatened" (R. 758, cf. R. 747). Ballew, like the others, denied making the statement although he admitted that he signed it (R. 756, 759).

Agents Lunsford and Whitten both testified that Ballew was not arrested (R. 801–802, 811). "When he came out [of the house], at our request, on his own free will and acquiescence, he agreed to accompany us to Copperhill where we could talk to him and take our time. He said he would be glad to cooperate in any way since he knew nothing at all about the matter at that time" (R. 810–811, cf. R. 801–802). Lunsford and Whitten also testified that no handcuffs were used (R. 802, 811); that they went to Copperhill because the house where Ballew was found was full of people (R. 806, 814–815); and that Ballew himself asked to stay at the Y. M. C. A. to talk to the sheriff although the agents offered to drive him home (R. 817). Before he signed his confession in the courthouse, the agents said, Ballew talked to Simonds, read the confession, and it was read to him (R. 803, 812, 813). The agents denied that they told him he was signing a release (R. 803, 813).

After the close of the preliminary examination the court ruled that the confessions were admissible in evidence (R. 403, 775–776). The judge concluded that there was "no showing so far as duress is concerned that they were forced to make any statement that was an involuntary statement" and that the statements were not made "as the result of any promise of reward" (R. 403).

Substantially the same testimony as the judge heard on the preliminary examination was given again in the presence of the jury. The court submitted to the jury on this evidence the question whether the statements were voluntary and charged that the confessions should not be considered unless the jury first found that they were freely and voluntarily made (R. 831). He discussed the rule and relevant considerations in great detail and charged in part as follows (R. 831–832):

> * * * It is primarily for the Court to determine whether or not such statements are admissible for your consideration but it is wholly for you to determine how much weight or credit you will give to these statements. In doing this I instruct you that before you can consider the confessions of the defendants, or any of them, you must first find that they were freely and voluntarily made, without fear or compulsion, or hope of reward. In determining this matter you will take into consideration all the facts and circumstances in evidence before you bearing on this subject; that is the way and manner in which confession or admission was obtained. * * * In passing on this question you will consider the age, experience, education, station in life and physical condition of the defendants; whether they had friends, relatives, or counsel present; whether the questioning was carried on in an unreasonable manner and at unusual hours; whether or not they or

any of them had been given drugs; whether they had sleep or food, whether or not they were kept in a private building or abused or cursed and forced to do other acts against their will.

ARGUMENT

I

The principal question raised by the petition is whether the evidence shows that the confessions were admissible in evidence against the petitioners.[18] We shall discuss the situations as to each of the petitioners.

A. PETITIONERS ANDERSON AND ELLIS

Petitioners Anderson and Ellis did not confess. Under the court's rulings the confessions made by other defendants could not be used against Anderson and Ellis (R. 403–410). Petitioners Anderson and Ellis, therefore, have no standing to complain that involuntary confessions were used against them.

B. PETITIONERS RHODES, BALLEW, AND QUEEN

Petitioners Rhodes, Ballew, and Queen confessed and their confessions were introduced in evidence. But the record seems to raise no substantial question as to whether their confessions were admis-

[18] The petition seems to present the case under the "due process" clause of the Fifth Amendment and we shall emphasize that ground. Logically, however, the question can also be considered on the basis of the rules of evidence and of the privilege against self-incrimination.

sible. Each testified that he was unlawfully arrested and spent one night in jail with other defendants. Rhodes was questioned for an hour and a half or two hours on the day after his arrest, and confessed; according to his testimony, he was called a "damn liar" during the questioning but the agents denied this charge and he complained of no other mistreatment. Ballew was questioned from four o'clock to six on the afternoon of his arrest and made a statement the next day; he admitted that he "was not abused or threatened" (R. 758). Queen was anxious for his sick baby but did not testify that the agents or deputy sheriffs mistreated him.

Rhodes also testified that he signed the confession "because [Agent] Lunsford said they would take care of me", and Ballew and Queen gave evidence that they signed papers containing confessions without knowing the contents because they were told that if they signed, they could go home. Each of the agents, however, specifically denied each such incident and testified that the statements taken by him were deliberately and freely given without inducement of any kind. The trial court and the jury under careful instructions resolved the factual issue against the accused (*supra*, pp. 25–26).

This Court has stated that in appropriate cases it is bound to make an independent examination of the record, a duty not foreclosed by the finding of a court, or the verdict of a jury, or both

(*Lisenba* v. *California*, Nos. 4 and 5, this Term, decided January 19, 1942), but that where the evidence is conflicting as to the methods used the Court accepts the determination of the triers of fact unless it is so lacking in support that to give it that effect would work that fundamental unfairness which is at war with due process (*Id.*).

As to Rhodes, Ballew, and Queen, the testimony of occurrences prior to their confessions, considered with the findings of the triers of the facts that those occurrences did not render the confessions involuntary, do not furnish justification for holding that due process was denied or that their confessions were involuntary.[18]

C. PETITIONERS WOODWARD, HUBBARD, AND SIMONDS

Petitioners Woodward, Hubbard, and Simonds present closer questions as to whether their confessions were inadmissible as the result of compulsion, inducements or threats. Though the ultimate issue is whether under all the circumstances the confessions were made voluntarily, in the interests of greater clarity we shall discuss separately (1) compulsion, and (2) inducement and threats.

1. *Compulsion.*—We may at the outset lay to one side the presentation of the evidence by the petition and the brief of National Federation for Constitutional Liberties, *amicus curiae*. The case

---

[18] Rhodes, Ballew and Queen did not give any testimony suggesting that they had heard from Campbell or any one else of Plaxico's alleged offer of a parole for "Them boys that come clean." See p. 14, *infra*.

is there presented as if much of the evidence set forth were uncontradicted, notwithstanding that Government witnesses specifically and fully denied the testimony of maltreatment and intimidation. For example, there was decided conflict as to the character of the food and the hours and manner of questioning; likewise, as to the claim that the coffee was drugged, that Hubbard was denied his glasses and food, water, and cigarettes, that Simonds and Hubbard asked for and were refused counsel, and that all three were terrorized by armed deputies hostile to them. We have already in our Statement (*supra*, pp. 11–23) set forth the conflicting testimony in detail. The district court at the preliminary examination heard the witnesses on both sides as to the circumstances under which the confessions were made (R. 167–400). The court found no duress (R. 403). Much the same testimony was repeated in the presence of the jury with instructions not to consider the confessions at all unless they were made voluntarily and to pass upon each confession separately (R. 831–833). While this Court is not foreclosed from examining the evidence, it has only recently held that it will not lightly overturn the resolution of conflicting evidence by court and jury—it must be so lacking in support that to give it effect would work fundamental unfairness. It cannot be said that fundamental unfairness would result in this case from giving effect to the findings of court and jury so far as concerns such claims of peti-

tioners as that they were abused, badly fed, sought and were denied counsel, and were terrorized by deputies. *Lisenba* v. *California*, *supra*.[20]

There remain the following undisputed facts upon which it must be determined whether, as matter of law, they render the confessions involuntary or show "fundamental unfairness" notwithstanding that the triers of the facts found them voluntary: Woodward, Hubbard, and Simonds were arrested without warrant by deputy sheriffs "on State charges" on the afternoon of Wednesday, April 24th, and were held in the custody of state officials until Tuesday, April 30th, when they were arraigned before a United States Commissioner.[21] All three were held at times in the Y. M. C. A., a building owned by the Company against which they had gone on strike and used as the headquarters for deputy sheriffs appointed when the Company reopened its mine; there were perhaps twenty-five deputy sheriffs. At other times Woodward, Simonds, and Hubbard were held in the city jail; there, on two nights, four or more were crowded into one small cell.

---

[20] The Court has hitherto set aside findings that confessions were voluntary only when facts not in conflict showed that compulsion was applied. *E. g.*, *Wan* v. *United States*, 266 U. S. 1, 16; *Brown* v. *Mississippi*, 297 U. S. 278, 287; *Chambers* v. *Florida*, 309 U. S. 227; *White* v. *Texas*, 310 U. S. 530.

[21] The petition implies that the federal agents detained the petitioners (Pet. 10). They were held by the sheriff on his own initiative. See pp. 9–10, *supra*.

They saw no one "from the outside." They saw each other and other strikers who were in custody; the Special Agents were in communication with the families. Simonds, Hubbard, and Woodward were questioned separately for about two hours on the afternoon of Thursday, April 25th, and again for about two hours that evening. Hubbard was questioned again on Saturday and there were other occasions on which they were questioned for short periods. On Sunday, April 28th, all three confessed after questioning which lasted on that day less than two hours; Simonds first and then Hubbard, who was in the room when Simonds confessed; then Woodward was brought in and he made an oral statement after the other two told him what they had done. Simonds' statement was at once reduced to writing. Woodward's confession was written out in two long sessions on Monday; he gave minute details. Hubbard's written confession was made Tuesday.

There are diverse elements in these undisputed facts upon which a judgment as to compulsion now turns: (a) The sheriff and his deputies held the men for six days without arraignment. This we assume was illegal, and such conduct has been sternly condemned by this Court. *Lisenba* v. *California*, *supra*. But such illegal conduct does not of itself justify exclusion of a confession in a state court. *Lisenba* v. *California*, *supra*. We, therefore, cannot say a contrary result obtains here. (b) The confessions were elicited in response to questioning; but the questioning wa-

not oppressive, and this Court has squarely held that confessions elicited in response to questions by law-enforcement officers are not thereby rendered inadmissible. *Wan* v. *United States*, 266 U. S. 1 (a federal trial); *Lisenba* v. *California*, *supra* (a state trial). Compare the earlier case of *Bram* v. *United States*, 168 U. S. 532. (c) The crimes grew out of a labor dispute; there were many armed deputies about as a result of the strike, and the men were held at times on company-owned property. But the deputies did not participate in the questioning and no petitioner so much as intimated that fear of them played a part in his decision to confess. If the surrounding circumstances contained some element of intimidation, though not voiced by petitioners at the trial, there was, on the other hand, an element of strength in the close association of petitioners with one another and with their fellows while in custody. They were not alone and unsupported. Compare *Chambers* v. *Florida*, 309 U. S. 227; *Wan* v. *United States*, *supra*. (d) For two nights they were crowded in a cell, but on the issue of the confessions this does not loom large for one of those nights was after they had confessed and in response to their own request that they be placed together.

It appears, therefore, from those facts that are not in conflict that officers subjected those suspected of crime, who were without counsel and

were illegally held, to somewhat lengthy but periodic and not oppressive questioning, in an atmosphere of possible hostility but also during a time when they had the association of one another. They were confronted with the results of investigations otherwise conducted, were questioned about these matters and their own activities, and finally admitted their guilt.

The facts of no two cases are alike. The circumstances in the *Wan* case were much graver; so, too, were the circumstances in *Chambers* v. *Florida*. In *Lisenba* v. *California*, fundamental error was not found in the admission of the confession. The Court said that the case was close; but unless federal trials are to be held to a stricter standard than state trials, it cannot be said under the principles there discussed, that a denial of due process has here occurred.

2. *Inducements and Threats.*—Petitioners Hubbard, Woodward, and Simonds also contend that rewards were held out to them to confess, that the federal agents promised them preferred treatment such as low bail bonds, light sentences, and "paroles," and that they were threatened with severer punishment if they kept silent. But with an exception presently to be noted every claim of threats and inducement was specifically denied and the petitioners' contentions on this point present an issue of credibility on which the findings of court and jury should not be disturbed in the

absence of a showing that to give those findings finality would work fundamental unfairness. *Lisenba* v. *California, supra.* The exception is that Campbell, a deputy sheriff, testified without contradiction that he had told "four or five" of the men in custody that Agent Plaxico had said he would "recommend a parole for those boys that come clean" (R. 273). Plaxico denied that he had made such a statement to Campbell but testified that Campbell had asked him to recommend leniency and that he had replied that all he could do would be to tell the facts (R. 318). This talk between Plaxico and Campbell, however, took place after the confessions had been signed (R. 318). To accept Campbell's testimony of what he told some of the men in custody [22] would avail petitioners nothing because it was not shown that he made the statement to any men in custody before the confessions had been signed. Moreover, there is no evidence that Campbell talked about parole to any of the petitioners or that any of the petitioners were told what he said; no petitioner claimed that Campbell offered any improper inducement to him, and other men were in custody.

Here, too, then, it cannot be said that fundamental unfairness would result from giving effect

---

[22] Although Campbell was first called by the Government (R. 151), he gave this testimony as the defendants' witness (R. 268, 273).

to the conclusions of the triers of the facts that the confessions were not the product of inducements or threats.

On the whole, on the basis of a careful and, we believe, fair analysis of the case, we conclude that the decision below was correct.

II

The second question raised by the petition for certiorari is whether a confession is sufficient to support a conviction in the absence of other evidence showing that the defendants participated in the conspiracy. This question is raised only by petitioners Queen, Rhodes, and Ballew (Pet. 3, 8, 24, 25).

Under this head no serious question is raised. The record is clear that the *corpus delicti*, i. e., existence of a conspiracy and an overt act, was proved independently of the confessions by the testimony of Freed Long (see pp. 4–7, *supra*). And it is settled law that the identity of the accused is not a part of the *corpus delicti*, and a confession alone is sufficient to prove participation in the crime once it has been proved that the crime was committed. *Vinkemulder* v. *United States*, 64 F. (2d) 535 (C. C. A. 5), certiorari denied, 290 U. S. 666; *United States* v. *Marcus*, 53 Fed. 784, 786 (C. C. S. D. N. Y.) error dismissed *Marcus* v. *United States*, 159 U. S. 259; *Ryan* v. *United States*, 99 F. (2d) 864, 870 (C. C. A. 8).

certiorari denied, 306 U. S. 635; *Murray* v. *United States*, 288 Fed. 1008, 1015–1016 (App. D. C.); cf. *Forte* v. *United States*, 94 F. (2d) 236, 244 (App. D. C.). The cases cited by petitioner (Pet. 25), are distinguishable.[23]

III

All the petitioners complain that the trial court improperly limited the cross-examination of government witnesses by sustaining objections to questions designed to show the number of extra deputies the sheriff had employed (R. 157, 551), that they were paid by the company (R. 553, 568) and that they had been instructed to search the petitioners' cars when "found out at night" (R. 154, 560, 608). It is their contention that the responses to these questions would have shown (1) that the confessing petitioners were intimidated into signing their statements and (2) that the company itself caused the lines to be dynamited (Pet. 28).

No question calling for review is presented by this contention. The questions were not asked to test the credibility of the witnesses, but were di-

---

[23] *Warszower* v. *United States*, 312 U. S. 342 and *Goldstein* v. *United States*, 99 F. (2d) 305 (C. C. A. 10) point out that without proof of the crime, a confession alone will not support a conviction. *Langer* v. *United States*, 76 F. (2d) 817 (C. C. A. 8) held that proof that a defendant committed the substantive offense does not prove that she engaged in a conspiracy.

rected to collateral matters. "The extent to which cross-examination upon collateral matters shall go is a matter peculiarly within the discretion of the trial judge. And his action will not be interfered with unless there has been upon his part a plain abuse of discretion." *United States* v. *Manton*, 107 F. (2d) 834, 845 (C. C. A. 2), certiorari denied, 309 U. S. 664; *Glasser* v. *United States*, Nos. 30–32, this Term, decided January 19, 1942; *Alford* v. *United States*, 282 U. S. 687. In the present case the dangers of opening up the collateral subjects of the strike, of the violence and lawlessness in the community and of the need for searching cars and for extra deputies (compare R. 548–549) are sufficient to show the reasonableness of the district court's ruling.

Moreover, as the circuit court of appeals held, "the proferred testimony was irrelevant and if answers had been elicited from the witnesses, they would have thrown no light on the issues in this case" (R. 883). Assuming that the witnesses would have testified that the deputies were paid by the Company and that an order had been issued to search petitioners' cars, such testimony would have had but a remote bearing upon petitioners' theory that they were intimidated into giving confessions to the federal agents (Pet. 28).[24] None of

[24] Petitioners also complain (Pet. 26) of the court's refusal to allow petitioner Ellis to state how many times his car had been searched (R. 608), but Ellis did not confess, so that even if his car had been searched, he was not thereby coerced into confessing—and, obviously, the confessing petitioners could not have been thereby intimidated.

the petitioners testified that the deputies directly or indirectly brought about their confessions (See p. 33, *supra*). Similarly, proof that the company was paying the salaries of the deputies, however undesirable an example of administration of public law it might be, would hardly have justified an inference that the company "through the sheriff and the special deputies or guards blew up the lines in order to get Government agents in and break the strike" as petitioners argue (Pet. 28). Cf. *Fields* v. *United States*, 221 Fed. 242, 244 (C. C. A. 4), certiorari denied, 238 U. S. 640.

Finally, the petitioners were not prejudiced by the court's rulings, for the record shows that substantially the same information sought by these questions was given to the jury by other testimony. Thus, the sheriff admitted that about five days before the company decided to reopen the plant, he established headquarters in the company-owned Y. M. C. A. building (R. 550–551, 733) and that he had "put on a number of special deputies" (R. 551) of whom "fifteen to twenty-five" were quartered in the Y. M. C. A. building at Copperhill (R. 553), and petitioner Ballew was permitted to testify that "we couldn't step out of the house without being arrested and stopped on the highway" (R. 748). It is true that there was no evidence admitted to show that the deputies were paid by the Company but the evidence as a whole was evidently sufficient to

show the petitioner's theory of the dynamitings, for they concede that the trial judge correctly explained it in his charge (Pet. 30). Accordingly, the limitation upon cross-examination could not have substantially handicapped petitioners in presenting their case to the jury.

IV

Petitioners Anderson and Ellis, who did not make confessions, contend that there was insufficient evidence to support the verdict as to them.

The testimony of Freed Long, if believed, showed Anderson to have been a leader in the conspiracy. But Anderson attacks this testimony as insufficient to convict on the ground that Long was an impeached witness whom the court below characterized as "a spy and a paid informer" (R. 876). "The short answer to this is that the credibility of a witness is a question for the jury." *Glasser* v. *United States, supra.*

Against Ellis there was evidence that he took Long to a meeting of the conspirators on April 13 (R. 132, 137); that he worked around Anderson's office and ran errands for him (R. 611); that on the night of March 31, when the first dynamiting occurred, deputies became suspicious of Anderson's car, attempted to follow it, but were outdistanced; that the car reappeared at a picket station in Copperhill, but they lost it again; that still later, near Ducktown, the car approached them and when about 200 feet away it stopped

and a passenger got out; that the car then proceeded toward them and they stopped it; that petitioner Ellis was driving, and his wife and baby were with him (R. 152, 153, 158). This was about midnight (R. 152, 153). The deputies found a brace and bit in the car (R. 153, 154, 156, 157, 159, 160). About fifteen minutes later the first explosion of the power lines occurred (R. 157).[25] The poles had been bored with a brace and bit to make holes for the dynamite (R. 153).

This evidence, we submit, is sufficient to sustain Ellis' conviction. "The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States, supra.* And where a conspiracy is established, slight evidence connecting the defendant therewith may still be substantial and if so sufficient to sustain a conviction. *Galatas* v. *United States,* 80 F. (2d) 15, 24 (C. C. A. 8), certiorari denied, 297 U. S. 711; *Meyers* v. *United States,* 94 F. (2d) 433 (C. C. A. 6), certiorari denied, 304 U. S. 583.

---

[25] It was for the jury to determine the credibility of Ellis' explanation of his presence on an unpaved side road at midnight; that they were riding around trying to "relieve the baby's colic"; that while riding around they had left the paved road and had driven off on a side road because his wife "had never been out on that road" and that the passenger had been a stranger, a hitch-hiker they picked up on the road (R. 606, 607).

CONCLUSION

The only question of any importance posed by the petition for writ of certiorari is whether the confessions of Woodward, Simonds and Hubbard were admissible in evidence. For the reasons which we have stated, we believe that the decision of the Circuit Court of Appeals on this, as on all other questions in the case, is correct. We accordingly do not concur in the petition but submit the question on the basis of the foregoing analysis of the case, designed to enable the Court to determine whether further review is warranted.[26]

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

OSCAR A. PROVOST,
ANDREW F. OEHMANN,
ARCHIBALD COX,
Attorneys.

MARCH 1942.

---

[26] Immediately prior to sending this memorandum to final print we received a copy of the brief filed on behalf of American Civil Liberties Union, *amicus curiae*, upon which, without longer withholding our present memorandum, we desire, separately, to comment.

U. S. GOVERNMENT PRINTING OFFICE: 1942